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VILLAGE OF WILMETTE

1200 Wilmette Ave.
WILMETTE, ILLINOIS 60091-0040

OFFICE OF THE
VILLAGE PRESIDENT

(847) 251-2700
FAX (847) 853-7700
TDD (847) 853-7634

August 16, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William Kennard
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

RE: *Ex Parte* Filing in Case Nos. WT 99-217 & CC 96-98

Dear Chairman Kennard,

On behalf of the Village of Wilmette, Illinois, I respectfully request that you and the Commission not adopt the rule proposed in the above-referenced cases, which would allow any telephone company to serve any tenant of a building and to place their antennae on the building roof.

In some states, seventy or more new telephone carriers have certified to provide service. Add in the wireless telephone providers and, under the proposed rule, we may have up to 100 providers entitled to place their wires or other equipment in a building and all their antennae on the building's roof, all without the consent of the building's owner.

The Commission lacks the authority to do this. It would violate basic property rights – a landlord, city or condominium has the right to control who comes onto their property. In Illinois, when a cable television provider wants to provide service to a condominium or apartment building, the provider must pay fair compensation for this taking of property, as the Constitution requires. Neither the Constitution nor any Act of Congress empowers the Commission to confiscate and condemn private or local government property for private commercial use in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennae on roofs. Zoning and building codes are purely matters of state and local jurisdiction which, under Federalism and the Tenth Amendment, the Commission may not preempt.

For example, building codes are enacted for engineering-related safety reasons. These needs vary by region, weather patterns and building type, and such risks as earthquakes, hurricanes and anticipated accumulation of snow or ice. If antennae are

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to heavy or too high, roofs cave in or collapse. If they are not adequately secured, they will blow over and expose people and property to injury and damage.

Similarly, zoning laws are matters of purely local concern. They have long been recognized by state and federal courts in every state and federal district as protecting the public health, safety and welfare by ensuring the compatibility of property uses, preserving property values, preserving public health, protecting property values and safeguarding the character and quality of life in our communities. We may restrict the number, types, location, size and aesthetics of antennae on buildings (such as requiring them to be properly screened) to achieve these important and legitimate goals, and still see that needed telecommunications services are available to those that want them. This requires us to carefully balance competing interests – which we do every day with success.

The application of zoning principals is highly dependent on local conditions. These conditions vary greatly from state to state, from municipality to municipality, and from neighborhood to neighborhood within municipalities. We have successfully applied these principles and balanced competing concerns for many decades. Zoning laws and building codes have not unduly impeded technological development or the expansion of our economy, nor will they. There is simply no basis in fact to conclude that, for a brand new technology (wireless fixed telephones) with a miniscule track record, there are problems of such a massive scale with the 38,000 units of local government in the United States as to warrant drastic and unprecedented federal action.

On local rights-of-way, local management of public rights-of-way is vital to the protection of the public health, safety and welfare. Congress has specifically prohibited the Commission from preempting local control in this area.

We believe that telephone providers' complaints about right-of-way management and fees are hyperbole and intended only to enable them to commercially exploit public property without compensation or accountability. Their hyperbole is demonstrated by the small number of court cases on this subject – only about a dozen nationwide in three years under the 1996 Telecommunications Act. With thousands of telephone companies operating nationwide in 38,000 municipalities, this miniscule number of cases shows that there is no serious problem requiring federal intervention. In Illinois, telecommunications providers under State law already have the absolute right to occupy public rights-of-way, so long as they pay a uniform telecommunications infrastructure maintenance fee and obey local construction and occupancy rules. Our experience has been completely different than that described by the telecommunications industry to you – that of telecommunications providers indiscriminately saw-cutting or closing public streets without knowledge or permission of local officials, diminishing the service life of public streets, damaging the right of way and impeding fire and police vehicles unaware of their activities. Municipalities bear the

immediate consequences and costs of commercial exploitation of public rights-of-way, and need continued authority to protect the public interest.

Finally, we are surprised and disturbed that you suggest that the combined federal, State and local tax burden on new telelphone companies is too high. Aside from our disagreement with the factual basis of your assertion (all local taxes are uniform for all providers and, in any event, are not actually paid by the providers but are always passed through to customers), the FCC has no authority to affect State or local taxes, any more than it has the authority to affect federal taxes.

For all the foregoing reasons, the Village of Wilmette respectfully requests that you take no action on rights-of-way and taxes.

Respectfully,

Nancy Canafax
Village President

NC/tjf

cc:

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ms. Magalie Roman Salas (two copies)
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. Jeffrey Steinberg
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. Joel Tauenblatt
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

International Transcription Services
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Mr. Kevin McCarty
Assistant Executive Director
U.S. Conference of Mayors
1620 I Street
Fourth Floor
Washington, DC 20006

Mr. Barrie Tabin
Legislative Counsel
National League of Cities
1301 Pennsylvania Ave., NW
6th Floor
Washington, DC 2004

Mr. Robert Fogel
Associate Legislative Director
National Association of Counties
440 First Street, NW
8th Floor
Washington, DC 20554

Mr. Lee Ruck
Executive Director
NATOA
1650 Tysons Rd.
Suite 200
McLean, VA 22102-3915

Mr. Thomas Frost
Vice President, Engineering Services
BOCA International
4051 W. Flossmoor Rd.
Country Club Hills, IL 60478

Mr. John W. Pestle, Esq.
Varnum, Riddering, Schmidt & Howlett
Bridgewater Place
P.O. Box 352
Grand Rapids, MI 49501-0352

Hon. John Porter
Member of Congress
2373 Rayburn Bldg.
Washington, DC 20515

Hon. Richard Durbin
U.S. Senator
364 Russell Senate Office Bldg.
Washington, DC 20510-1302

Hon. Peter Fitzgerald
U.S. Senator
555 Dirksen Senate Office Bldg.
Washington, DC 20510-1302